

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:  
CE Toland & Son  
5300 Industrial Way  
Benicia, California 94510  
Solano County  
  
ID No. CAL 000 207 423  
  
Respondent.

Docket No.: HWCA2005-0953

CONSENT ORDER

Health and Safety Code Section 25187

INTRODUCTION

The State Department of Toxic Substances Control ("Department") and Respondent, CE Toland & Son ("CE Toland") enter into this Consent Order and agree as follows:

1.1. Site. CE Toland owns and operates a facility in Benicia, California to fabricate metals and manufacture stairs, stair rails, and ornamental metals. As part of its manufacturing process, CE Toland generates chrome-containing sand and other waste streams. The facility does not conduct onsite treatment or onsite recycling.

1.2. Inspection. The Department inspected the Site on September 14, 2005.

1.3. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

1.4 Jurisdiction. Jurisdiction exists pursuant to Health and Safety Code section 25187.

1.5. Hearing. CE Toland waives any right to a hearing in this matter.

1.6. Full Settlement. This Consent Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

1.7. In the event of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 *et seq.*, within five (5) years of the date the violations occurred, this agreement and information regarding the alleged violations are admissible in a formal proceeding.

### VIOLATIONS ALLEGED

2. As a result of its inspection, the Department alleges the following violations:

2.1. CE Toland violated Health and Safety Code section 25189 and the California Code of Regulations, Title 22, section 66262.11, by disposing of non-RCRA paint sludge to the common trash and failing to have analyzed the waste for hazardous characteristics;

2.2. CE Toland violated Health and Safety Code section 25201 and the California Code of Regulations, Title 22, section 66262.34(f) by failing to adequately label containers or drums onsite, including bins of chrome-containing sand, used oil and oily absorbent;

2.3. CE Toland violated the California Code of Regulations, Title 22, section 66265.174 by failing to conduct container inspections weekly;

2.4. CE Toland violated Health and Safety Code section 25201 and the California Code of Regulations, Title 22, section 66262.34(a) by accumulating waste onsite beyond the allowed accumulation time limit;

2.5. CE Toland violated the California Code of Regulations, Title 22, section 66265.16(a)-(c) and (d) by failing to have a written training plan for employees who handle hazardous waste during the period of time from 2001-2004, and by failing to provide adequate on-the-job training for employees who handle hazardous waste as applies to both small quantity and large quantity generators;

2.6. CE Toland violated the California Code of Regulations, Title 22, section 66265.31 by failing to provide adequate containment for an area containing more than 800 square feet of asphalt contaminated with paint sludge;

2.7. CE Toland violated the California Code of Regulations, Title 22, sections 66265.31 and 66265.173 by failing to protect the contents of an open bin of chrome-containing sand from wind dispersal.

#### SCHEDULE FOR COMPLIANCE

3. CE Toland shall comply with the following:

3.1. CE Toland shall make all payments at the time and in accord with any conditions set forth in section 4 below.

3.2. CE Toland certifies that it has corrected all of the above violations, addressed the circumstances which gave rise to the violations, and instituted new practices to ensure the violations will not occur in the future. CE Toland must continue to comply with the California Health and Safety Code and in specific CE Toland shall continue to protect the contents of the chrome-containing sand bin from wind dispersal.

3.3. Submittals: All submittals from CE Toland pursuant to this Consent Order shall be sent simultaneously to:

Mr. Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
8800 Cal Center Drive  
Sacramento, California 95826-3200

Mr. Terry Schmidtbauer, Environmental Health Manager  
Solano County CUPA  
Solano County Department of Resource Management  
Environmental Health Division  
675 Texas Street, Suite 5500  
Fairfield, CA 94533

3.4. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to CE Toland in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by CE Toland shall alter this agreement or be construed to relieve CE Toland of its obligation to obtain such formal approvals as may be required.

3.5. Compliance with Applicable Laws: CE Toland shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment During Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the Site or in the surrounding area or to the environment, the Department may order CE Toland to stop further implementation for such period of time as needed to abate the endangerment. Any

deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.7. Liability: Nothing in this Consent Order shall constitute an admission of liability or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of CE Toland, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, CE Toland may be required to take further actions as are necessary pursuant to California and federal law to protect public health or welfare or the environment.

3.8. Site Access: Access to the Site upon reasonable notice shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of CE Toland in carrying out the terms of this Consent Order including conducting such tests as the Department may deem necessary. CE Toland shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

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3.9. Sampling, Data, and Document Availability: CE Toland shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by CE Toland or on CE Toland's behalf in any way pertaining to work undertaken pursuant to this Consent Order. CE Toland shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by CE Toland for a minimum of five years after the conclusion of all activities under this Consent Order. If the Department requests prior to the five year period that some or all of these documents be preserved for a longer period of time, CE Toland shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by CE Toland or related parties specified in paragraph 15, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by CE Toland or its agents in carrying out activities pursuant to this Consent Order.

3.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by CE Toland pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

3.12. Extension Requests. If CE Toland is unable to perform any activity or submit any document within the time required under this Order, CE Toland must,

prior to the expiration of the time, request an extension in writing.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

### PAYMENTS

4.1. CE Toland shall pay the Department a total sum of \$63,500.

4.2. Payment in the amount of \$58,500 is due within thirty (30) days of the effective date of this Order

4.3. CE Toland's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment

Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806.

A photocopy of the check shall be sent: simultaneously to:

Mr. Charles A. McLaughlin, Chief  
State Oversight and Enforcement Branch  
Statewide Compliance Division  
8800 Cal Center Drive  
Sacramento, California 95826-3200

Mr. Dennis Mahoney, Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street, 23rd floor  
P. O. Box 806  
Sacramento, California 95812-0806

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Ms. Jamie Jefferson  
Deputy Attorney General  
Department of Justice  
Office of the Attorney General  
P.O. Box 70550  
Oakland, California 94612.

4.4. Because CE Toland agrees to send at least two (2) employee(s), at least one (1) of which is a manager or supervisor of CE Toland's hazardous waste operations, to California Compliance School Modules I-IV, the amount imposed by this Order has been reduced by \$5,000 below the amount stated in Paragraph 4.1.

4.5. Attendance must be completed and CE Toland must submit a Certificate of Satisfactory Completion for each employee issued by the California Compliance School to DTSC, as noted in the paragraph above, within 185 days of the date of this Order.

4.6. If CE Toland fails to submit the certificate(s) as required, a penalty in the amount of the remaining \$5,000 is due and payable within 30 days after the 185-day period expires. The 185-day period may be extended by a DTSC Branch Chief upon a written request demonstrating good cause.

4.7. If CE Toland fails to make payment as provided above, CE Toland agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

#### OTHER PROVISIONS

5.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.



5.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject CE Toland to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

5.3. Parties Bound: This Consent Order shall apply to and be binding upon CE Toland and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

5.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

5.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: <u>March 21, 2007</u>	<u>Original signed by C E Toland</u>
Type or Print Name	<u>C. E. Toland</u>
Title of Representative	<u>CHRM</u>
	Respondent, CE Toland & Son

Dated: <u>April 2, 2007</u>	<u>Original signed by Charles A. McLaughlin</u>
	Charles A. McLaughlin, Chief
	State Oversight and Enforcement Branch
	Statewide Compliance Division
	Department of Toxic Substances Control